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Of Attorney for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

RADAGAST PET FOOD, INC., an
Oregon corporation,

Plaintiff,

Case No. 3:19-cv-01467-JR

**DECLARATION OF ERIC S. POSTMA IN
SUPPORT OF DEFENDANTS' MOTION
FOR ATTORNEY FEES**

v.

CENTINELA FEED, INC., a
California corporation, and **THE
LOTUS PET FOOD, INC.**, a
California corporation,

Defendants.

I, Eric S. Postma, declare as follows:

1. I am an attorney practicing in the law firm of Bittner & Hahs, P.C. located in Lake Oswego, Oregon. I have been lead trial counsel and have had primary responsibility for litigating this case on behalf of Defendants. I am competent to testify to the matters set forth in this declaration and do so based on personal knowledge.

2. Defendants are the prevailing party in this litigation pursuant to FRCP 54(d)(2), LR 54.3, and are entitled to an award of fees pursuant to the agreement at issue in the lawsuit (which includes the potential award of fees to a prevailing party applying Oregon law), and ORS 20.096 and ORCP 54 A(3).

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3. The total amount of attorney fees requested is \$115,398.00, which is determined by taking the complete fees incurred number of \$120,960.00 and factoring in a discount of \$4,129.50 and a write down of \$1,432.50.

4. Three time-keepers from Bittner & Hahs, P.C. were involved in this litigation. The name, position, and level of experience of each individual time-keeper together with his or her current hourly billing rate, the number of hours billed, and the total amount of fees attributed to the time-keeper are summarized in the following chart:

Name	Position and Experience	Current Billing Rate	Number of Hours	Total Fees for Timekeeper
Eric S. Postma	Attorney, 21+ years	\$350.00	187.30	\$ 65,567.50
Nathan B. Pogue	Attorney, 5 years	\$275.0	170.10	\$ 46,832.50
Michelle Moore	Paralegal, 30+ years	\$160.00	53.50	\$ 8,560.00
Total fees incurred:				\$120,960.00

5. Eric Postma is an attorney practicing in the area of civil litigation since 1999, the last ten years of which have been in Lake Oswego, Oregon after prior practice in Portland, Oregon. That litigation experience includes practice in Oregon, Washington and California, including state and federal courts in each jurisdiction.

6. Nathan Pogue is an attorney practicing in the area of civil litigation since 2016, practicing in Lake Oswego and Hillsboro, Oregon. That litigation experience includes practice in Oregon and Washington.

7. The billing rates listed in the above chart are reasonable and are similar of those customarily charged for the litigation practice area in the legal community located in the Tri-County area of Oregon. The latest Oregon State Bar (OSB) Economic Survey dated December 26, 2017 reflects that lawyers with twenty plus years of practice in this geographic area bill at rates between \$325.00 and \$475.00 per hour, and between \$185.00 and \$275.00 for five years of

practice. This OSB survey is 4 years old.

8. Considering the scope of this case as prosecuted by Plaintiff, the number of hours requested is reasonable. The hourly rates charged are also reasonable considering that the hourly rates for the two attorneys at issue, both experienced in civil litigation, fall approximately at the 50th percentile range for attorneys in the Portland metropolitan area as per the 2017 Oregon State Bar Economic Survey. Accordingly, the requested fees of \$115,398.00 are reasonable and appropriate.

9. The total number of hours billed for which compensation is sought is reasonable under the circumstances of this case. In its complaint, Plaintiff prayed for an award of attorney fees pursuant to a nondisclosure agreement between the Plaintiff and the Defendants. Each of the Defendants in this matter filed answers, likewise claiming a right to an award of attorney fees pursuant to the terms of the nondisclosure agreement. After litigation over the course of more than one year, including extensive discovery and motions practice, Plaintiff filed a notice of dismissal against all defendants. (DE 60). The court entered an order of dismissal on February 11, 2021 (DE 61). Defendants had to expend significant fees to address a very broad discovery request on an initial complaint that was very broad in its scope; that defense counsel had to expend significant effort to address Plaintiff's unwillingness to provide discovery on their very broad case; and defense counsel had to expend significant time and fees in order to address a motion to compel in which defendants prevailed and also forced the filing of an amended complaint more limited in scope, as well as a filed motion for summary judgment that Plaintiff eventually withdrew.

10. An upward adjustment in the lodestar is not being requested in this case.

11. Immediately prior to current counsel for Plaintiff indicating their desire to dismiss the matter through a voluntary dismissal, myself and counsel for the Plaintiff discussed leaving the dismissal open such that Defendants could make a request for attorney fees and costs, while preserving Plaintiff's right to object. That was also communicated to the court clerk prior to entry of the order of dismissal. Attached hereto as Exhibit A is a true and accurate copy of the

email exchange between counsel and the Court clerk commencing February 9, 2021 and concluding February 11, 2021 where both attorneys indicated an understanding that Defendants would be presenting a request for attorney fees.

12. A detailed summary of each time-keeper's time incurred by each time-keeper on a chronological basis is attached to this declaration as Exhibit B.

**I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct to the best of my knowledge.**

DATED this 25th day of February, 2021.

BITTNER & HAHS, P.C.

By: s/Eric S. Postma
Eric S. Postma, OSB #993478
Nathan B. Pogue, OSB #164611
Of Attorneys for Defendants

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 25th day of February, 2021, I served the foregoing

3 **DECLARATION OF ERIC S. POSTMA IN SUPPORT OF DEFENDANTS' MOTION**

4 **FOR AN AWARD OF ATTORNEY FEES** on the following individual:

5 Nicholas J. Henderson, OSB #074027

6 Motschenbacher & Blattner LLP

7 117 SW Taylor Street, Suite 300

8 Portland, OR 97204

9 E: nhenderson@portlaw.com

10 *Of Attorneys for Plaintiff*

11 via CM/ECF Notice of Electronic Filing.

12 DATED this 25th day of February, 2021.

13 BITTNER & HAHS, P.C.

14 By: s/Eric S. Postma

15 Eric S. Postma, OSB #993478

16 *Of Attorneys for Defendants*